

Summary of SC90093, *Debra Derosse v. State Farm Mutual Automobile Insurance*
Appeal from the Jefferson County circuit court, Judge M. Edward Williams
Opinion issued Dec. 8, 2009

Attorneys: Derosse was represented by Alan S. Mandel and Michael J. Sudekum of Schlueter, Mandel & Mandel LLP in St. Louis, (314) 621-1701; and State Farm was represented by Gary P. Paul, Jeffrey J. Brinker and Michael C. Bowgren of Brinker & Doyen LLP in Clayton, (314) 863-6311.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman sought payment under the uninsured motorist provisions of her automobile insurance policy for emotional distress and related damages she alleges she suffered during an automobile accident. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the trial court's grant of summary judgment in the insurance company's favor and remands (sends back) the case for further proceedings. State law requires coverage for damages from owners or operators of uninsured motor vehicles for "bodily injury, sickness or disease." Here, the woman pleaded a claim under the "sickness" or "disease" categories of harm and, therefore, her case may proceed. In a concurring opinion, Judge Michael A. Wolff agrees with the Court's analysis of the statute's language but questions whether the result is wise and what the legislature meant.

Facts: During an automobile accident, a body was ejected from an uninsured motorist's vehicle and hit Debra Derosse's vehicle as she was driving down the highway. The body hit the windshield, rolled off the hood and went under the car. When Derosse was able to stop her car, she saw the body lying by her driver's side door and realized she knew the victim. Although she was not physically injured and refused medical treatment at the scene, Derosse threw up when she arrived at home. Her doctor prescribed her Valium and Lexapro. In the following weeks, she had nightmares, migraines and other headaches, nausea, diarrhea, vomiting, anxiety and backaches. She eventually sought treatment from therapists. Derosse's insurance policy with State Farm Mutual Automobile Insurance provided uninsured motorist coverage for "damages for bodily injury," which the policy defined as "bodily injury to a person and sickness, disease or death which results from it." Derosse sought coverage for damages by making an uninsured motorist claim under her policy with State Farm. The company denied her claim, and she sued for coverage. The trial court granted summary judgment in State Farm's favor, concluding her uninsured motorist coverage for "bodily injury" did not encompass coverage for emotional and mental distress. Derosse appeals.

REVERSED AND REMANDED.

Court en banc holds: The trial court erred in granting State Farm summary judgment, as its policy fails to provide coverage mandated by state law. Section 379.203.1, RSMo 2000, requires all automobile liability insurance coverage to include damages from owners or operators of uninsured motor vehicles “because of bodily injury, sickness or disease, including death, resulting therefrom” and requires that such coverage should exist even if the identify of the owner or operator of the motor vehicle cannot be established. State Farm conceded at oral argument that its policy language is not as broad as the statutory coverage language of section 379.203.1. Because the policy’s language is less broad than that of the statute, the statute’s broader language must control Derousse’s case. The language of section 379.203.1 is ambiguous to the extent that it is not evident whether the word “bodily” modifies only the word “injury” or whether it also modifies the phrase “sickness or disease.” Ambiguities in statutes are resolved by determining the legislature’s intent, based on the language used, and giving effect to that intent wherever possible. Here, because the statute uses a comma to separate the phrase “bodily injury” from the words that follow, the statute provides a series of categories of harm requiring uninsured motorist coverage: (1) bodily injury; (2) sickness; or (3) disease. Considering the ordinary dictionary definitions of these terms, Derousse’s damages are compensable under the “sickness” or “disease” categories provided by section 379.203.1. As such, Derousse pleaded claims covered by section 379.203.1, and State Farm was not entitled to judgment as a matter of law. Given that material issues of fact remain in dispute about Derousse’s injuries, the case is remanded for further proceedings.

Concurring opinion by Judge Wolff: The author agrees that the term “bodily” in section 379.203.1 modifies only “injury,” permitting Derousse to file a claim for “sickness” or “disease” but questions whether the legislature meant to provide compensation for sickness or disease unless it was “bodily” and not mental or emotional.